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09/894,213	06/27/2001	Christian L. Struble	10010610-1	4820

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EXAMINER

ALVAREZ, RAQUEL

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3688

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/894,213
Filing Date: June 27, 2001
Appellant(s): STRUBLE, CHRISTIAN L.

David R. Risley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/10/95 appealing from the Office action mailed 9/21/2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(7) Grounds of Rejection to be Reviewed

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Evidence Relied Upon

5,565,909	Thibadeau	10-1996
6,636,733	Helferich	6,636,733

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 6-9, 16-17, 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thibadeau et al. (5,565,909 hereinafter Thibadeau) in view of Helferich (6,636,733 hereinafer Helferich).

With respect to claims 1, 6, 9, 16-17, 20-23, 26, 29 Thibadeau teaches a method for controlling the presentation of local messages, the method being practiced by a local computing device having a processing device and a memory (Abstract). Receiving local weather information from a sensing unit that is separate from the computing device and transmitted from a remote server via a network (col. 4, lines 14-24 and col. 13, lines 13-61).

With respect to determining which advertisements are appropriate for presentation using the local computing device and based upon the received weather condition information and presenting the ads on a local display unit. Thibadeau teaches sending flood or tornado warnings on a user terminal based on the weather conditions (col. 4, lines 25-38 and col. 13, lines 22 to col. 14, lines 1-57). Thibadeau does not specifically teach that the messages transmitted are advertisements. Helferich teaches advertisements that are based on the measured weather condition. A weather of 98 degrees will provide an advertisement for Coke)(col. 10, lines 10-15). It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have replaced the warnings information with the advertisements of Helferich because such a modification would motivate and would increase the consumption of certain products based on the weather condition.

Claims 7 and 27 further recite that the presentation of the ads is on a display mounted to a fuel pump. Helferich teaches that the advertisements are presented on a display mounted to telephone 10. Helferich does not specifically teach mounting the display on a fuel pump. Official notice is taken that it is old and well known in gas

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stations and the like to have advertisements display on a fuel pump in order to induce the customers to make purchases while pumping gas. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included presentation of the ads is on a display mounted to a fuel pump in order to achieve the above mentioned advantage.

With respect to claims 8, 19, 28 and 30, Helferich further teaches that the local time of day is used as a selection criteria (col. 9, lines 66-, col. 10, lines 1-16). It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included using the time of day as a selection criteria because such a modification would help to better target the advertisements.

Claims 24-25 further recite disqualifying available advertisements with reference to a correlation table. Since the combination of Thibadeau and Helferich teach determining which advertisements to present based on the weather conditions then it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included disqualifying available advertisements with reference to a correlation table because such a modification would allow the process of determining which advertisements to present easier by disqualifying the ads that are not relevant.

(11) *Response to Arguments*

Appellant argues Thidadeau doesn't teach controlling the presentation of advertisements. The Examiner wants to point out that in the advisory action mailed on 12/20/2004, the Examiner had pointed out that a typo appeared on page 2 of the Final Office action mailed on 9/17/2004 and that "controlling the presentations of the

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advertisements” should be replaced with –controlling the presentation of local messages-. Therefore, Thidadeau was cited for controlling the presentation of local messages. Helferich was the reference cited for controlling the presentation of advertisements.

Appellant argues that Thidabeau doesn't teach any disclosure or suggestion of a “sensing unit”. The Examiner respectfully disagrees with Appellant because Thidabeau clearly teaches a barometer for forecasting weather and for determining altitude of a certain location and this information is transmitted to a computer device via a network in order to determine the target messages to send to a user based on the measured weather and altitude information (in Thidabeau ,col. 13, lines 13-61)

Appellant argues that Thidabeau has nothing to do with advertisements. The Examiner want to point out that Helferich was the reference cited for teaching the messages being advertisements. With respect to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition Thibadeau's even mentions on col. 4, lines 4-9, “this information preferably includes digital information and may include, for example, **“offers of commercial services that are location specific, public, or legal notices targeted to a specific area, public safety and emergency information notices, and many other forms of information which the end user may wish to examine”**”.

Appellant argues that Thibadeau doesn't teach filtering advertisement based upon weather. The Examiner wants to point out that Thibadeau teaches filtering weather related information and messages based on the measured weather information of a particular location (in Thidabeau ,col. 13, lines 43-61).

Appellant argues that the Thibadeau reference and Helfrich are not combinable. The Examiner disagrees with Appellant because both references are concerned with sending to the users focused or targeted messages based on certain measured weather conditions. Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the skilled in the art is presumed to have some knowledge in the art. In this case given that Thibadeau teaches filtering messages based on the measured weather condition, which can include offers of commercial services that are location specific (as explained above) and Helferich teaches filtering advertisements based on the measured weather conditions, one of ordinary skill in the art would have the knowledge to have combined the messages of Thibadeau to include advertisements as one of location specific messages to provide to the end user.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As explained above, one of ordinary skill in the art at the time that the claimed invention was made would have recognized combining the references.

In response to Appellant's argument regarding mounting the display unit to a fuel pump. The Examiner took official notice that mounting a display unit to a fuel pump is old and well known in gas stations or the like in order to display advertisements. Although Appellant is admitting that advertisements displays on fuel pumps are well known (page 14 of brief), Appellant further argues that displaying advertisements on a fuel pump based on weather information is not well known. The Examiner wants to point out that as stated above that displaying advertisements on weather information is taught by the combination of Thidadeau and Helferich as stated above and that the official notice taken was only on displaying advertisements on a fuel pump.

Appellant argues that Helferich has nothing to do with barometric pressure. The Examiner wants to point out that Helfirich wasn't cited to teach barometric pressure but Thibadeau was cited for teaching measuring barometric pressure (see col. 13, lines 13-61).

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(12) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Raquel Alvarez/
Primary Examiner, Art Unit 3688
October 4, 2008

Conferees

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